



# California Fair Political Practices Commission

March 17, 1987

James R. Christiansen  
City Attorney of Solvang  
1607 Chapala Street  
Santa Barbara, CA 93101-2911

Re: Your Request for Informal  
Assistance  
Our File No. I-87-049

Dear Mr. Christiansen:

You have requested advice on behalf of Mr. Fillmore Condit, a real estate broker and member of the Solvang City Council, concerning his duties under the conflict of interest provisions of the Political Reform Act (the "Act").<sup>1/</sup> Your letter states only a general question; it does not seek advice concerning a specific decision pending before the city council. Therefore, we consider it to be a request for informal assistance pursuant to Regulation 18329(c) (copy enclosed).<sup>2/</sup>

## QUESTIONS

1. If Mr. Condit has received \$250 or more in commission income during the preceding 12 months from a real estate transaction in which he represented the seller, may he participate in decisions affecting the buyer?

2. If Mr. Condit received \$250 or more in commission income during the preceding 12 months because of a "co-listing" agreement for the sale of real property, but was not otherwise

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

<sup>2/</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

involved in the sale, may he participate in decisions affecting the seller?

#### CONCLUSIONS

1. Mr. Condit may participate in decisions affecting the buyer in a real estate transaction although he has received \$250 or more in commission income for representing the seller.

2. Mr. Condit must disqualify himself from participating in decisions which foreseeably and materially affect a seller from whom he has received \$250 or more in commission income because of a "co-listing" agreement.

#### ANALYSIS

Section 87100 prohibits a public official from making, participating in, or using his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on, among other interests, any source which has provided or promised the official \$250 or more in income during the 12 months preceding the decision. (Section 87103(c).)

Mr. Condit is a real estate broker and receives commission income for his services. Regulation 18704.3 (copy enclosed) states that the following are sources of commission income for a public official who is a real estate broker:

(A) The person the broker represents in the transaction;

(B) If the broker receives a commission from a transaction conducted by an agent working under the broker's auspices, the person represented by the agent;

(C) Any brokerage business entity through which the broker conducts business; and

(D) Any person who receives a finder's or other referral fee for referring a party to the transaction to the broker, or who makes a referral pursuant to a contract with the broker.

Regulation 18704.3(c)(2)(A)-(D).

The full gross value of the commission income for a specific sale is attributed to each source of commission income. (Regulation 18704.3(d).) In calculating the amount of commission income from a sale, any portion of the commission that must be paid to the real estate agent who handled the sale should be deducted from the broker's share. (Carey Opinion, 3 FPPC Ops. 99 (No. 76-087, Nov. 3, 1977), copy enclosed.) If the real estate broker receives commission income totaling \$250 or more from a transaction, the real estate broker may be disqualified from participating in decisions affecting any of the sources of commission income.

Pursuant to Regulation 18704.3(c)(2)(A), any person the broker represents in a real estate transaction is a source of commission income to the broker. Therefore, if the broker represents only the seller, the seller, but not the buyer, is a source of commission income to the broker. The intent of the regulation is to attribute commission income to the person or persons in the transaction who have a direct connection with the broker. Thus, if Mr. Condit has received \$250 or more in commission income during the preceding 12 months from a real estate transaction in which he represented only the seller, he may participate in decisions affecting the buyer.<sup>3/</sup>

Your second question concerns a real estate transaction in which Mr. Condit receives \$250 or more in commission income as a result of a co-listing agreement. Under these facts, Mr. Condit is not the broker who is responsible for the sale. Nevertheless, he is one of the brokers who has entered into an agreement with the seller to list the property and has actually derived commission income from that transaction. Therefore, Mr. Condit has received commission income for representing the seller. (Regulation 18704.3(b)(2)(A).) Accordingly, Mr. Condit must disqualify himself from participating in any decision which would foreseeably and materially affect the seller.<sup>4/</sup>

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<sup>3/</sup> In your letter you specifically stated that the sale is not conditioned on any zoning action by the City of Solvang. If the city council were faced with a decision that could prevent the sale from closing, Mr. Condit must disqualify himself from participating in that decision. (Regulation 18702(b)(3)(B).)

<sup>4/</sup> The broker who handled the sale also would be a source of commission income to Mr. Condit. (Regulation 18704.3(b)(2)(D).)

James R. Christiansen  
March 17, 1987  
Page 4

We have enclosed a copy of the Thorner Opinion, 1 FPPC Ops. 198 (No. 75-089, Dec. 4, 1975), and a copy of Regulations 18702, 18702.1 and 18702.2. These materials will assist you in determining whether a particular decision will foreseeably and materially affect the seller who is a source of \$250 or more in commission income to Mr. Condit. If you have any questions concerning a particular decision before the city council, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths  
General Counsel

*Kathryn E. Donovan*  
By: Kathryn E. Donovan *by DMJ*  
Counsel, Legal Division

DMG:KED:plh  
Enclosures

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JAMES R. CHRISTIANSEN  
ATTORNEY AND COUNSELOR AT LAW  
1607 CHAPALA STREET  
SANTA BARBARA, CALIFORNIA 93101-2911  
TELEPHONE 962-8141  
AREA CODE 805

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February 4, 1987

Office of the General Counsel  
Fair Political Practices Commission  
P.O. Box 807  
Sacramento, CA 95804-0807

Gentlemen:

I am writing to you as City Attorney of the City of Solvang on behalf of Mr. Fillmore Condit, a City Councilman in the City of Solvang, and a real estate broker in active practice in the City of Solvang.

Two questions have arisen with respect to Mr. Condit:

1. When Mr. Condit represents exclusively the seller in a real estate sales transaction, is he required to disqualify himself as to a matter coming before the City Council concerning the buyer if he receives income from the sale in excess of \$250.00? In this situation:

- (a) The funds are placed in escrow by the buyer, but charged to the seller;
- (b) Mr. Condit represents solely the seller; and
- (c) The closing is not conditioned on any zoning action of the City of Solvang.

2. Is Mr. Condit required to disqualify himself as to the seller when he receives more than \$250.00 from the seller in the previous twelve months as a result of a "co-listing" agreement for a sale of real property in which Mr. Condit does not participate in the sale?

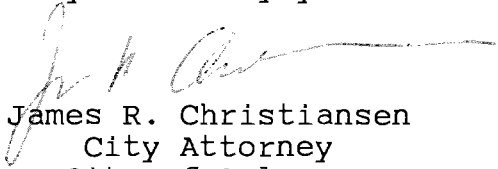
Your office previously informally advised me that in the first case, Mr. Condit need not disqualify himself, but in the second case that he must disqualify himself.

JAMES R. CHRISTIANSEN  
ATTORNEY AND COUNSELOR AT LAW

Fair Political Practices Commission  
February 4, 1987 Page 2

I would very much appreciate your written advise in this matter.

Very sincerely yours



James R. Christiansen  
City Attorney  
City of Solvang

JRC/bc  
cc: Mr. Fillmore Condit



# California Fair Political Practices Commission

February 11, 1987

James R. Christiansen  
Solvang City Attorney  
1607 Chapala Street  
Santa Barbara, CA 93101-2911

Re: 87-049

Dear Mr. Christiansen:

Your letter requesting advice under the Political Reform Act was received on February 9, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Kathryn E. Donovan, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days. You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Diane M. Griffiths".

Diane M. Griffiths  
General Counsel

DMG:plh  
cc: Fillmore Condit

JAMES R. CHRISTIANSEN  
ATTORNEY AND COUNSELOR AT LAW  
1607 CHAPALA STREET  
SANTA BARBARA, CALIFORNIA 93101-2911  
TELEPHONE 962-8141  
(AREA CODE 805)

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March 16, 1987

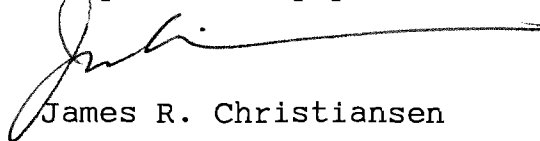
Kathryn E. Donovan, Esq.,  
Attorney, Legal Division  
California Fair Political Practices Commission  
P.O. Box 807  
Sacramento, CA 95804-0807

Dear Ms. Donovan:

In response to your telephone call regarding the letter with reference to Mr. Fillmore Condit, City Councilman of the City of Solvang, I have spoken with Mr. Condit. He advises me that one of the ways that this is handled, which probably should be the basis for your letter, is that both he and the other broker are listed on the escrow instructions to be paid out of escrow, with one broker being the listing broker, and the other being the selling broker.

I hope that this clarifies matters. If not, please do not hesitate to call me.

Very sincerely yours,



James R. Christiansen

JRC/bc



# California Fair Political Practices Commission

March 5, 1987

James R. Christiansen  
Solvang City Attorney  
1607 Chapala Street  
Santa Barbara, CA 93101-2911

Re: Your Request for Advice  
Our File No. 87-049

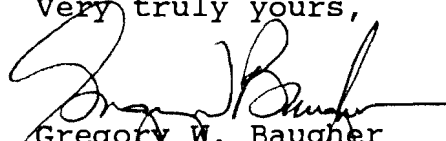
Dear Mr. Christiansen:

This letter is to advise you that I have determined that good cause exists for an extension of time for responding to your request for advice under the Political Reform Act.<sup>1/</sup> Section 83114(b) requires the Commission to provide advice to a requestor within 21 working days of receipt of all the facts material to answering the request for advice. Section 83114(b) also provides that this time may be extended for good cause.

Commission advice letters provide certain immunities. Therefore, each advice letter must be given a careful and complete review before it is issued. As a result of a sudden and substantial increase in the volume of advice requests which arrived within a short period of time, the staff is unable to fully and fairly respond to all of those requests at the same time. In order to assure full consideration of your request, I have extended the time for our response by 14 working days. Our response will be mailed to you on or before that date.

If you anticipate significant problems as a result of this delay, please contact the Commission's General Counsel, Diane Griffiths at (916) 322-5901.

Very truly yours,

  
Gregory W. Baugher  
Executive Director

GWB:plh

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code.